

SENATE BILL 2932

By Gardenhire

AN ACT to amend Chapter 297 of the Private Acts of 1976; as amended by Chapter 125 of the Private Acts of 1977; Chapter 80 of the Private Acts of 1985; Chapter 99 of the Private Acts of 1985; Chapter 71 of the Private Acts of 2012; Chapter 72 of the Private Acts of 2014; and any other acts amendatory thereto, relative to the Chattanooga-Hamilton County Hospital Authority.

WHEREAS, the Baroness Erlanger Hospital was founded in 1899 through a private donation by Baron Frederic Emile d'Erlanger and other private individuals and has operated under various structures and corporate forms since that time; and

WHEREAS, the Chattanooga-Hamilton County Hospital Authority was created by a private act passed by the General Assembly of the State of Tennessee on March 11, 1976 (1976 Private Act), and adopted by a majority of the qualified voters of Hamilton County, Tennessee, on August 5, 1976; and

WHEREAS, the General Assembly has amended the 1976 Private Act several times, including in 1977, 1985, 2003, 2012, and 2014; and

WHEREAS, the Supreme Court of Tennessee in 1979 affirmed the constitutionality of the 1976 Private Act and directed the City of Chattanooga and Hamilton County to transfer certain real property to the Chattanooga-Hamilton County Hospital Authority; and

WHEREAS, the Chattanooga-Hamilton County Hospital Authority has, since its formation, operated the Erlanger Health System as a safety-net hospital system; and

WHEREAS, the healthcare industry has changed significantly since the Chattanooga-Hamilton County Hospital Authority was formed in 1976; and

WHEREAS, the Chattanooga-Hamilton County Hospital Authority has evolved to address many of these changes, but successful operation in the healthcare industry requires more flexibility than a governmental entity such as the Chattanooga-Hamilton County Hospital Authority can provide going forward; and

WHEREAS, many hospitals across Tennessee and the United States have long been successfully owned and/or operated by non-governmental entities; and

WHEREAS, the General Assembly recognizes that continued operation of the Erlanger Health System may not be an effective or beneficial governmental function; and

WHEREAS, the General Assembly recognizes that certain changes to the 1976 Private Act are necessary so that Hamilton County and the Chattanooga-Hamilton County Hospital Authority may fully consider whether Erlanger Health System should be owned and operated by a non-governmental entity; and

WHEREAS, the General Assembly believes amending the 1976 Private Act to permit this process to occur would be in the best interest of the citizens of the State of Tennessee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 297 of the Private Acts of 1976, as amended by Chapter 125 of the Private Acts of 1977, Chapter 80 of the Private Acts of 1985, Chapter 99 of the Private Acts of 1985, Chapter 71 of the Private Acts of 2012, Chapter 72 of the Private Acts of 2014, and any other acts amendatory thereto, is amended by adding the following as new sections:

SECTION 23. The Hospital Authority may, by resolution adopted by a two-thirds (2/3) vote of the Board of Trustees, provide for the sale, lease, or other transfer of any or all of the Hospital Authority's assets or liabilities on any terms and conditions considered reasonable by the Board of Trustees, including the sale, lease, or other transfer for no or nominal monetary consideration. The Hospital Authority is authorized to make such sale, lease, or other transfer only to a nonprofit corporation that meets each of the following requirements:

(a) The nonprofit corporation is established pursuant to the Tennessee Nonprofit Corporation Act, compiled in Chapters 51 through 68 of Title 48 of the Tennessee Code Annotated;

(b) The nonprofit corporation is organized specifically for the purpose of

owning, leasing, or operating one (1) or more facilities;

(c) The nonprofit corporation is an entity exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code;

(d) The nonprofit corporation has agreed to appropriate covenants for continuing the mission of Erlanger Health System, including covenants related to charity care, emergency and trauma services, major clinical service lines, the children's hospital, federally qualified health centers, population health, and participation in the federal Medicare and Medicaid programs;

(e) The nonprofit corporation has agreed to appropriate commitments to maintain and protect the Hospital Authority's assembled work force, including providing positions, salaries, and employee benefit arrangements at least equivalent to current levels and making reasonable allowance for accumulated benefits (i.e., sick leave, vacation, educational benefits, etc.) that employees were eligible for at the time of the transaction;

(f) The nonprofit corporation has agreed to appropriate processes and procedures to ensure adherence to the covenants and commitments, including a reporting and oversight structure that will be established to monitor the nonprofit corporation's adherence to the covenants and commitments;

(g) The nonprofit corporation has agreed to approvals that it will not sell, lease, or transfer all or substantially all of its assets or operations without the prior approval of the County Commission of Hamilton County, the prior approval of the Attorney General and Reporter, and the prior approval of any entity specifically established to ensure compliance with covenants and commitments; however, the agreement contemplated by this subsection does not need to require approvals for:

(1) A sale, lease, or transfer between the nonprofit corporation

and its affiliates, including an entity or person that controls, is controlled by, or is under common control with the nonprofit corporation; or

(2) The participation of the nonprofit corporation as a shareholder of a corporation, as a joint venturer in a joint venture, as a general partner or limited partner in a partnership, as a member of a nonprofit corporation, or as a member of any other lawful form of business organization;

(h) The nonprofit corporation has agreed that any debts or obligations undertaken by the nonprofit corporation are payable only from the assets of the nonprofit corporation and do not constitute debts or obligations of the Hospital Authority or any other entity or governmental body, absent written agreement otherwise by the authority with that entity or governmental body;

(i) The nonprofit corporation has agreed to assume full responsibility for the Hospital Authority's frozen defined benefit plan;

(j) The nonprofit corporation has agreed to request a ruling from the Pension Benefit Guaranty Corporation that the defined benefit plan, as assumed, is covered by the Pension Benefit Guaranty Corporation;

(k) The nonprofit corporation has agreed to make annual premium payments to the Pension Benefit Guaranty Corporation once coverage by the Pension Benefit Guaranty Corporation is confirmed;

(l) The nonprofit corporation has agreed to voluntarily comply with all of the requirements of the Public Employee Defined Benefit Financial Security Act of 2014 until the Pension Benefit Guaranty Corporation confirms coverage of the assumed defined benefit plan; and

(m) The nonprofit corporation has agreed to make the funding of the assumed pension plan a priority use of the proceeds received from any

subsequent sale or lease of all, or substantially all, of the assets of the nonprofit corporation.

The Hospital Authority shall not agree to waive compliance with any of the agreements made by the nonprofit corporation described in this section.

SECTION 24. Prior to any action to approve this act by the legislative body of Hamilton County, the Hospital Authority shall have provided the Hamilton County Chief Executive Officer and County Commission with sufficient information regarding the proposal to sell, lease, or engage in another transfer as described in Section 23 (the "Proposal") to allow Hamilton County to make an informed decision regarding the approval of this act. The Proposal must include:

- (a) The governing documents for the nonprofit corporation;
- (b) A detailed description of the proposed sale, lease, or transfer to the nonprofit corporation; and
- (c) The language of the requirements described in Section 23 as memorialized in the transaction documents.

SECTION 25. As soon as practicable, but no later than sixty (60) days prior to the anticipated close of a transaction described in Section 23, the Board of Trustees of the Hospital Authority shall submit to the Hamilton County Chief Executive Officer and County Commission the transaction documents memorializing the requirements and Proposal described in Sections 23 and 24. After receiving the transaction documents, but no later than forty-five (45) days after receiving the transaction documents or ten (10) days prior to the anticipated close of the transaction, whichever is earlier, the Hamilton County Chief Executive Officer shall confirm that the terms of the transaction documents are consistent with the terms of the Proposal presented to Hamilton County prior to the approval of this act. If the terms of the transaction documents are consistent with the terms of the Proposal, the County Commission shall take final action regarding waiver of the reversionary interests and other real estate provisions of

Sections 2 and 17 for purposes of effectuating the sale, lease, or transfer of the Hospital Authority's assets as described in the transaction documents. No sale, lease, or transfer of the Hospital Authority's assets as described in Section 23 shall occur until the County Commission, and the Board of Commissioners to the extent of the City's reversionary interest, have approved the waiver of the reversionary interests as set forth in this section.

SECTION 26. The competitive bidding requirements set forth in Section 6 shall not apply to:

- (a) Any sale, lease, or transfer described in Section 23; or
- (b) The operation of the facilities by a nonprofit corporation described in Section 23.

SECTION 27. Following a sale, lease, or transfer described in Section 23, the Hospital Authority and Hamilton County may, by resolution of the Board of Trustees and a resolution of the Hamilton County Commission, dissolve the Hospital Authority. Each resolution must:

- (a) Find that the purposes for which the Hospital Authority was created have been substantially accomplished;
- (b) Find that all of the obligations of the Hospital Authority have been fully paid or otherwise provided for;
- (c) Find that the Board of Trustees and the Hamilton County Commission have agreed on the distribution of the funds and other properties of the Hospital Authority; and
- (d) Declare the Hospital Authority to be dissolved.

After the passing of each resolution, the Chief Executive Officer of Hamilton County shall execute and file for record with the secretary of state a joint certificate of dissolution reciting such facts and declaring the Hospital Authority to be dissolved. Upon such filing, the Hospital Authority shall be legally dissolved and cease to exist.

SECTION 28. Nothing in this act shall be construed to create or to be an authorization by any state or local governmental body for the creation of any nonprofit public benefit corporation for the purpose of owning, leasing, or operating any hospital or other healthcare facility currently owned, leased, or operated by the Hospital Authority. Any nonprofit corporation organized for the purposes set forth in Section 23 shall not be an agency, department, or political subdivision of the state or any local government. It is the intent of this act that any such nonprofit corporation organized for the purposes described in Section 23 shall not be subject to any provisions of law affecting only governmental or public entities.

SECTION 29. Nothing in this act shall be construed to bind or to operate as a limit on the powers of any private entity, including any nonprofit corporation organized for the purposes described in Section 23.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 3. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Hamilton County. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

SECTION 4. For the purpose of approving or rejecting the provisions of this act, it takes effect upon becoming a law, the public welfare requiring it. For all other purposes, it takes effect as provided in SECTION 3.